

SENATE BILL NO. 431

INTRODUCED BY ELLIOTT, COBB, KAUFMANN, TESTER

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE FUNCTIONS AND FUNDING OF THE
5 MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO THE DEPARTMENT OF
6 FISH, WILDLIFE, AND PARKS; PROVIDING THAT THE COMMISSION SHALL FUNCTION AS AN ADVISORY
7 COUNCIL ATTACHED TO THE DEPARTMENT; REVISING THE MEMBERSHIP AND TERMS OF THE
8 ADVISORY COUNCIL; TRANSFERRING TITLE OF THE "BOVEY ASSETS" FROM THE MONTANA
9 HISTORICAL SOCIETY TO THE STATE OF MONTANA; MAKING PERMANENT THE ALLOCATION OF
10 CERTAIN PROCEEDS OF THE LODGING FACILITY USE TAX TO THE MONTANA HERITAGE
11 PRESERVATION AND DEVELOPMENT ACCOUNT; AMENDING SECTIONS 16-4-205, 16-4-305, 22-3-1001,
12 22-3-1002, 22-3-1003, AND 22-3-1004, MCA; REPEALING SECTION 3, CHAPTER 469, LAWS OF 2001; AND
13 PROVIDING AN EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 16-4-205, MCA, is amended to read:

18 **"16-4-205. Limit one license to person -- business in name of licensee.** (1) A person may not be
19 issued more than one all-beverages license in any year, with the exception of a secured party issued an
20 additional all-beverages license as the result of a default. A secured party shall transfer ownership of any
21 additional all-beverages license within 180 days of issuance. A business may not be carried on under any
22 license issued under this chapter except in the name of the licensee.

23 (2) The provisions of this section do not apply to licenses held by the ~~Montana heritage preservation~~
24 ~~and development commission~~ department of fish, wildlife, and parks under the provisions of 16-4-305."

25
26 **Section 2.** Section 16-4-305, MCA, is amended to read:

27 **"16-4-305. ~~Montana heritage~~ Department of fish, wildlife, and parks retail alcoholic beverage**
28 **licenses -- use -- quota.** (1) (a) The ~~Montana heritage preservation and development commission~~ department
29 of fish, wildlife, and parks may use ~~Montana heritage~~ department of fish, wildlife, and parks retail alcoholic
30 beverage licenses within the quota area in which the licenses were originally issued; for the purpose of providing

1 retail alcoholic beverage sales on property originally acquired by the state under Title 22, chapter 3, part 10. The
 2 licenses are to be considered when determining the appropriate quotas for issuance of other retail liquor
 3 licenses.

4 (b) The department may issue a wine amendment pursuant to 16-4-105(2) if the use of a ~~Montana~~
 5 ~~heritage~~ department of fish, wildlife, and parks retail alcoholic beverage license for the sale of beer meets all
 6 the requirements of that section.

7 (2) The ~~Montana heritage preservation and development commission~~ department of fish, wildlife, and
 8 parks may lease a ~~Montana heritage~~ department of fish, wildlife, and parks retail alcoholic beverage license to
 9 an individual or entity approved by the department.

10 (3) ~~Montana heritage~~ Department of fish, wildlife, and parks retail alcoholic beverage licenses are
 11 subject to all laws and rules governing the use and operation of retail liquor licenses.

12 (4) For the purposes of this section, "~~Montana heritage~~ department of fish, wildlife, and parks retail
 13 alcoholic beverage licenses" are all-beverages liquor licenses and retail on-premises beer licenses that have
 14 been transferred to the ~~Montana heritage preservation and development commission~~ under the provisions of
 15 section 2, Chapter 251, Laws of 1999 department of fish, wildlife, and parks."

16

17 **Section 3.** Section 22-3-1001, MCA, is amended to read:

18 "**22-3-1001. Purpose.** (1) The purpose of this part is to acquire and manage, on behalf of the state,
 19 properties that possess outstanding historical value, display exceptional qualities worth preserving, and are
 20 genuinely representative of the state's culture and history, ~~and demonstrate the ability to become economically~~
 21 ~~self-supporting.~~ The ~~Montana heritage preservation and development commission~~ department of fish, wildlife,
 22 and parks shall achieve this purpose by purchasing fee title interests in real and personal property and by
 23 managing those properties in a manner that protects the properties and encourages economic independence.

24 (2) Property acquired pursuant to this section may not have an adverse financial effect on the operation,
 25 management, or funding of other property managed by the department pursuant to Title 23, chapter 1, part 1.

26 (3) THE MONEY IN THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT ESTABLISHED IN
 27 22-3-1004 AND ANY OTHER FUNDS INTENDED FOR THE MANAGEMENT, MAINTENANCE, OR OPERATION OF PROPERTIES
 28 ACQUIRED UNDER THIS PART MAY NOT BE USED TO ADDRESS MANAGEMENT, MAINTENANCE, OPERATION, OR FISCAL
 29 DEFICIENCIES OF THE SYSTEM OF STATE PARKS IDENTIFIED IN TITLE 23, CHAPTER 1, AS THEY EXISTED ON [THE EFFECTIVE
 30 DATE OF THIS ACT].

1 ~~(3)~~(4) Pursuant to the department's authority in 23-1-102(4) to appropriately designate state parks, it
 2 is intended that the historic properties in Virginia City and Nevada City be designated as a flagship park.

3 (5) AS USED IN THIS SECTION, "FLAGSHIP PARK" MEANS A PARK THAT CONTAINS NATURAL, CULTURAL, AND
 4 RECREATIONAL RESOURCES OF STATEWIDE OR NATIONAL SIGNIFICANCE, THAT OFFERS MULTIPLE ACTIVITIES FOR
 5 VISITORS, THAT DRAWS VISITORS FROM BEYOND THE IMMEDIATE AREA, AND THAT IS AN IMPORTANT ELEMENT IN
 6 MONTANA'S TOURISM ECONOMY."

7

8 **Section 4.** Section 22-3-1002, MCA, is amended to read:

9 **"22-3-1002. Montana heritage preservation and development ~~commission~~ advisory council.** (1)

10 There is a Montana heritage preservation and development ~~commission~~ advisory council. The ~~commission~~
 11 council is attached to the ~~Montana historical society for administrative purposes~~ department of fish, wildlife, and
 12 parks in an advisory capacity only, as defined in 2-15-102. The council shall advise the department on all issues
 13 related to:

14 (a) the purchase of properties in Virginia City and Nevada City;

15 (b) restoration, funding, maintenance, and operation of historic properties in Virginia City and Nevada
 16 City; and

17 (c) purchasing, restoring, and maintaining historically significant properties in Montana that are in need
 18 of preservation.

19 (2) The ~~commission council~~ consists of ~~14~~ 11 members. ~~The members shall broadly represent the state.~~
 20 ~~Nine members must be appointed by the governor, one member must be appointed by the president of the~~
 21 ~~senate, and one member must be appointed by the speaker of the house. The director of the Montana historical~~
 22 ~~society, the director of the department of fish, wildlife, and parks, and the director of the department of commerce~~
 23 ~~shall serve as members.~~

24 ~~(2)~~(3) Of the members ~~appointed by the governor:~~

25 (a) one member must have extensive experience in managing facilities that cater to the needs of
 26 tourists;

27 (b) one member must have experience in community planning;

28 (c) one member must have experience in historic preservation;

29 (d) two members must have broad experience in business;

30 (e) one member must be a member of the tourism advisory council established in 2-15-1816;

- 1 (f) one member must be a Montana historian; ~~and~~
- 2 (g) two members must be from the public at large;
- 3 (h) one member must be a member of the senate, recommended for appointment by the president of
- 4 the senate; and
- 5 (i) one member must be a member of the house of representatives, recommended for appointment by
- 6 the speaker of the house.
- 7 ~~(3) Except for the initial appointments, members appointed by the governor shall serve 3-year terms.~~
- 8 ~~Legislative appointees shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an~~
- 9 ~~appointment for the unexpired portion of the term.~~
- 10 ~~(4) (a) The commission may employ:~~
- 11 ~~———(i) an executive director who has general responsibility for the selection and management of commission~~
- 12 ~~staff, developing recommendations for the purchase of property, and overseeing the management of acquired~~
- 13 ~~property;~~
- 14 ~~———(ii) a curator who is responsible for the display and preservation of the acquired property; and~~
- 15 ~~———(iii) other staff that the commission and the executive director determine are necessary to manage and~~
- 16 ~~operate commission properties.~~
- 17 ~~———(b) The commission shall prescribe the duties and annual salary of the executive director, the curator,~~
- 18 ~~and other commission staff.~~
- 19 (4) Members of the advisory council are entitled to compensation as provided in 2-15-122(5).
- 20 Compensation must be paid from the Montana heritage preservation and development account."
- 21

22 **Section 5.** Section 22-3-1003, MCA, is amended to read:

- 23 **"22-3-1003. Powers of commission department -- contracts -- rules.** (1) (a) ~~The Montana heritage~~
- 24 ~~preservation and development commission~~ department of fish, wildlife, and parks may contract with private
- 25 organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20
- 26 years.
- 27 (b) Notwithstanding the provisions of Title 18, the contracts may be let by direct negotiation. The
- 28 contracts may be entered into directly with a vendor and are not subject to state procurement laws.
- 29 (c) Architectural and engineering review and approval do not apply to the historic renovation projects.
- 30 (d) The contracts must provide for the payment of prevailing wages.

1 (e) A contract for supplies or services, or both, may be negotiated in accordance with ~~commission~~
2 department rules.

3 (f) Management activities must be undertaken to encourage the profitable operation of properties.

4 (g) Contracts may include the lease of property managed by the ~~commission~~ department. Provisions
5 for the renewal of a contract must be contained in the contract.

6 (2) (a) Except as provided in subsection (2)(b), the ~~commission~~ department may not contract for the
7 construction of a building, as defined in 18-2-101, in excess of \$200,000 without the consent of the legislature.
8 Building construction must be in conformity with applicable guidelines developed by the national park service
9 of the U.S. department of the interior, the Montana historical society, and the ~~Montana~~ department of fish,
10 ~~wildlife, and parks~~.

11 (b) The ~~commission~~ department may contract for the preservation, stabilization, or maintenance of
12 existing structures or buildings for an amount that exceeds \$200,000 without legislative consent if the
13 ~~commission~~ department determines that waiting for legislative consent would cause unnecessary damage to
14 the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

15 (3) (a) Subject to subsection (3)(b), the ~~commission~~ department, as part of a contract, shall require that
16 a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs
17 of the property and the ~~commission~~ department.

18 (b) (i) Until the balance in the cultural and aesthetic trust reaches \$7,750,000, the ~~commission~~
19 department shall deposit the portion of profits not used for administrative costs and restoration of the properties
20 in the cultural and aesthetic trust.

21 (ii) Once the balance in the cultural and aesthetic trust reaches \$7,750,000, the ~~commission~~ department
22 shall deposit the portion of profits not used for administrative costs and restoration of the properties in the
23 general fund.

24 (c) ~~It is the intent of the 57th 58th legislature that no general fund money be provided for the operation~~
25 ~~and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.~~

26 (4) The ~~commission~~ department may solicit funds from other sources for the purchase, management,
27 and operation of properties.

28 (5) The ~~commission~~ department shall adopt rules establishing a policy for making acquisitions and
29 disposing of real and personal property or other assets. With respect to each acquisition or disposal, the policy
30 must give consideration to:

1 (a) whether the property or asset represents the state's culture and history;
 2 ~~(b) whether the property can become self-supporting;~~
 3 ~~(e)(b)~~ whether the property or asset can contribute to the economic and social enrichment of the state;
 4 ~~(d)(c)~~ whether the ~~property~~ asset lends itself to programs to interpret Montana history;
 5 ~~(e)(d)~~ whether the acquisition or disposal will create significant social and economic impacts to affected
 6 local governments and the state; ~~and~~

7 (e) the opportunity for public review and comment;

8 (f) the opportunity for review by the Montana historical society; and

9 ~~(f)(g)~~ other matters that the ~~commission~~ department considers necessary or appropriate.

10 (6) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed
 11 acquisition or disposal before a final decision to acquire or dispose of a property is made. The ~~commission~~
 12 department shall approve proposals for acquisition or disposal and recommend the approved proposal to the
 13 board of land commissioners.

14 (7) Proceeds from the disposition of any property or assets pursuant to subsection (5) must be placed
 15 in the Montana heritage preservation and development account.

16 ~~(7)(8)~~ Prior to the convening of each regular session, the ~~commission~~ department shall report to the
 17 governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium."
 18

19 **Section 6.** Section 22-3-1004, MCA, is amended to read:

20 **"22-3-1004. Montana heritage preservation and development account.** (1) (a) There is a Montana
 21 heritage preservation and development account in the state special revenue fund.

22 (b) Unless otherwise prohibited by federal law or agreement, the department shall deposit any federal
 23 money that the department obtains for heritage preservation and development into an account in the federal
 24 special revenue fund provided for in 87-1-601(1)(b).

25 (2) Money deposited in the ~~account~~ accounts must be used for:

26 (a) the purchase of properties in Virginia City and Nevada City;

27 (b) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

28 (c) purchasing, restoring, and maintaining historically significant properties in Montana that are in need
 29 of preservation.

30 (3) The ~~account is~~ accounts are statutorily appropriated, as provided in 17-7-502, to the ~~Montana~~

1 ~~heritage preservation and development commission~~ department to be used as provided in this section.

2 (4) All interest earned on money in the account must be deposited in the state special revenue fund to
3 the credit of the ~~commission~~ department."

4
5 **NEW SECTION. Section 7. Transfer of title.** Title to the real and personal property acquired by the
6 55th legislature and commonly referred to as the "Bovey assets" is transferred from the Montana historical
7 society to the state of Montana.

8
9 **NEW SECTION. Section 8. Transfer of licenses.** The all-beverages liquor licenses and retail
10 on-premises beer licenses that were transferred to the Montana heritage preservation and development
11 commission under the provisions of section 2, Chapter 251, Laws of 1999, are transferred to the department of
12 fish, wildlife, and parks.

13
14 **NEW SECTION. Section 9. Repealer.** Section 3, Chapter 469, Laws of 2001, is repealed.

15
16 **NEW SECTION. Section 10. Codification instruction.** [Section 7] is intended to be codified as an
17 integral part of Title 23, chapter 1, and the provisions of Title 23, chapter 1, apply to [section 7].

18
19 **NEW SECTION. Section 11. Instruction to code commissioner.** The code commissioner shall
20 renumber sections 22-3-1001 through 22-3-1004 as an integral part of Title 23, chapter 1.

21
22 **NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 2003.

23 - END -